



## **Senate Bill 990**

### **An Act Concerning Consumer Protection In the Home Care Industry**

March 4, 2015

The Connecticut Chapter of The Home Care Association of America supports Senate Bill 990 as revised in the amendment attachment to these comments.

Obtaining homecare for themselves or a family member should not be fraught with the transference of risks and obligations to the consumer generally borne by the entity providing or arranging such care. The Consumer should not be forced into becoming an "Accidental Employer".

Individuals providing home care services are treated by some agencies "registries" as Independent Contractors. Whether an individual is an employee is determined by tests prescribed by both the State of Connecticut and IRS.

Consequences to State and Federal treasuries as a result of Worker Misclassification are:

- Unemployment insurance is not reported or paid for the worker. Claims made may be processed with benefits paid. A payer source will be determined and billed for unpaid insurance contributions. What happens if there is no payer or payment of amount due cannot be made?
- Unpaid employment taxes; FWT, FICA, Medicare and FUT
- Income taxes may not be reported or paid. Resulting in lost revenue to State and Federal.

Issues raised by Registries in opposition to previous bills SB330, HB6432 and HB5313 have consistently dealt with;

- Loss of Jobs of Nurses (Not an issue with any proposed bills. Nurses were never considered)
- Lack of Skilled care to patients
- Removal of liability from the consumer
- Makes agency pay for minimum wage, overtime, workers compensation and unemployment insurance\*
- Forces registry model out of business. New model would be unsustainable
- Is a turf war between employer based agencies and registries
- Added cost to agency that must be passed to consumer
- Requires agency to know consumers home, schedule and safety
- Bill removes exemption from FLSA\*
- Requires compliance with wage and hour rules in a domestic setting\*
- Raises conflict with ERISA and requirements of Leased Employees
- Loss of consumer choice

**COMMENT** - None of the above (except \*) address the employee, which is the purview of the Labor & Public Employees Committee

**No mention or consideration of the consequences of;**

- Lack of accountable payer source for Unemployment Insurance to guaranty administrative and legal compliance.
- Lost revenue to the state and corresponding burden to other compliant employees who are sought to make up unfunded shortfalls for claims without payer source.
- The worker fails to meet test of independence.
- The agency is the true employer.

- Precedent setting rulings such as Lattimer.
- The caregiver is left without a payer source that provides the same coordinated benefits as workers comp.

**No mention was made of the worker. All efforts seem to be putting the caregiver into a very tenuous position of having no backstop which can aid in the event of injury or loss of employment.**

- HB 6678 has been proposed to make PCA workers employees under Chapter 568 Workers Compensation.
- *Muniz v. Allied Community Resources, Inc. et al.* This was a case of a PCA denied benefits under Worker's Compensation. The worker was a direct hire by a recipient of state funds for the purpose of paying for these care services. Injured on the job, she was awarded by the Workers Compensation Commission and that award was vacated by the COMPENSATION REVIEW BOARD whose decision was upheld on appeal due to her working less than 26 hrs. per week, a number set by the legislature to avoid having to provide workers compensation insurance.
- The caregiver may be denied the credits needed for benefits of Social Security and may be ineligible for Medicare.

**No mention was made as to the plight of the consumer except as relates to affordability of the lower cost alternative (Registry).**

- The consumer is interested in obtaining care for themselves or a loved one.
- Few if any have as an objective to become the employer of the caregiver
- An uninsured workers injury jeopardizes the assets of the consumer up to and including their home.
- Unpaid unemployment insurance, after a claim is made by an unemployed caregiver opens the consumer to retroactive bills for unpaid unemployment insurance and may invite more bills and levies by other taxing jurisdictions.
- If none of the disastrous events occur, the consumer, if intent on being compliant with laws will be faced with other insurance and tax payments that will no longer make the registry model the low cost alternative it once appeared.

**Statements made in many of the opposition testimony was of their support of the Department of Consumer Protection requirements for consumer disclosure.**

**COMMENT** - The disclosure required (also known as Raised Bill 911) stipulates that the consumer be alerted that they may be considered the employer of the caregiver.

In none of the testimonies do the respondents take exception to the use of the term employee. Failure to note would be acquiescence **THAT THE CAREGIVERS ARE IN FACT EMPLOYEES OF SOMEONE.** Definition as to who is the actual employer is the only question.

As no one party has stepped forward to definitively declare themselves the employer, each scenario depends upon either a novice employer who may or may not report payments to the caregiver or the caregiver (contractor) who, if no recorded income or liabilities are on file with the state or IRS must decide if he or she will be compliant and declare and pay the taxes. **Few working arrangements leave the roles of employer and employee so vague. Nor are there many which gives one the choice to comply or not with rules that virtually all others who work must follow. Forcing either of these groups into a role they should not be in is an unfair imposition upon the senior and a disservice to the caregiver.**

**Attachment A – SB 990 with HCA recommended changes**

**Attachment B – History of the Registry model**

## Attachment A

### Senate Bill 990-proposed amendment – Changes shown are CAPITALIZED

Section 1. (NEW) (*Effective October 1, 2015*) (a) Notwithstanding the provisions of section 20-679a of the general statutes, as amended by this act, no consumer who receives (1) homemaker services, as defined in section 20-670 of the general statutes, (2) homemaker-home health aide services, as defined in section 19a-490 of the general statutes, or (3) companion services, as defined in section 20-670 of the general statutes, provided by (A) a homemaker-companion agency, as defined in section 20-670 of the general statutes, (B) a homemaker-home health aide agency, as defined in section 19a-490 of the general statutes, or (C) a registry, as defined in section 20-670 of the general statutes, OR AN OWNER OR OCCUPANT OF THE PREMISES WHERE ANY SUCH SERVICES ARE PROVIDED, shall be deemed the employer of any individual referred to, supplied to or placed with such consumer by such agency or registry to provide the services described in subdivisions (1) to (3), inclusive, of this subsection.

(b) Notwithstanding the provisions of section 20-679a of the general statutes, as amended by this act, no consumer shall be liable, during the duration of time any individual provides any service described in subdivisions (1) to (3), inclusive, of subsection (a) of this section to such consumer, for (1) payment of contributions for the purposes of compliance with chapter 567 of the general statutes, in relation to such individual, (2) payment of workers' compensation insurance for the purposes of chapter 568 of the general statutes, in relation to such individual, or (3) payment of wages for the purposes of compliance with chapter 558 of the general statutes, in relation to such individual WITHOUT SUFFICIENT EVIDENCE OF (A) COMPLIANCE WITH THE WORKERS' COMPENSATION INSURANCE CLASSIFICATION CODE 8835 PUBLIC HEALTH NURSING, OR ITS EQUIVALENT, AS IDENTIFIED BY THE NATIONAL COUNCIL ON COMPENSATION INSURANCE, (B) THE SELF-INSURANCE REQUIREMENTS OF SUBSECTION (B) OF SECTION 31-284 OF THE GENERAL STATUTES, OR (C) STATE UNEMPLOYMENT INSURANCE RECORDS SHOWING THAT SUCH INSURANCE WAS REPORTED AND PAID ON BEHALF OF THE SAME CLASS OF WORKER PURSUANT TO CHAPTER 567 OF THE GENERAL

STATUTES. THE HOMEMAKER-COMPANION AGENCY, HOMEMAKER-HOME HEALTH AIDE AGENCY OR REGISTRY THAT PROVIDES SUCH SERVICES SHALL BE LIABLE FOR PAYMENT OF SUCH CONTRIBUTIONS, INSURANCE OR WAGES.

(c) Any consumer who receives any service described in subdivisions (1) to (3), inclusive, of subsection (a) of this section provided by an individual referred to, supplied to or placed with such consumer by an agency or registry described in subparagraphs (A) to (C), inclusive, of subsection (a) of this section, AND AN OWNER OR OCCUPANT OF THE PREMISES WHERE ANY SUCH SERVICES ARE PROVIDED, shall be immune from civil liability for any damage, injury or financial harm ARISING OUT OF AN INJURY to such individual WHEN PROVIDING CARE TO THE CONSUMER resulting from any act, error or omission of the consumer, unless such damage, injury or financial harm was caused by the reckless, wilful or wanton misconduct of the consumer. AND (ii) THE OWNER OR OCCUPANT OF THE PREMISES SHALL NOT BE IMMUNE FROM CIVIL LIABILITY FOR ANY DAMAGE, INJURY OR FINANCIAL HARM ARISING OUT OF AN INJURY TO SUCH WHEN PROVIDING CARE TO THE CONSUMER WHERE SUCH HARM WAS CAUSED BY THE RECKLESS, WILFUL OR WANTON MISCONDUCT OF THE OWNER OR OCCUPANT OR A CONDITION PRESENT IN A COMMON AREA OF THE PREMISES, OPEN TO THE PUBLIC OR IN THE CARE, CUSTODY OR CONTROL OF A PARTY OTHER THAN THE OWNER OR OCCUPANT.

Sec. 2. Subsection (b) of section 20-679a of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2015*):

(b) Each notice provided to a consumer pursuant to subsection (a) of this section shall be written in plain language and shall comply with the plain language standard detailed in section 42-152. Such notice shall include a statement identifying the registry as an employer, joint employer, leasing employer or nonemployer, as applicable, along with a statement advising the consumer he or she may be considered an employer under law and, if that is the case, the consumer may be held responsible for the payment of federal and state taxes, Social Security, overtime and minimum wage, unemployment, workers' compensation insurance payments and any other applicable payment required under state or federal law, except as excluded under section 1 of this act. The notice shall also include a statement that the consumer should consult a tax professional if he or she is uncertain about his or her responsibility for the payment of such taxes or payments.

## **Attachment B**

### **Registry is an Inappropriate Model in Today's World**

While the registry model has been in existence for many years, its origins date back to Nurses Registries which sent nurses on assignment for acute cases. As professionals, these individuals fit the definition of independent contractor. As time went by and needs changed, these agencies dealt with more chronic lower skill needs and provided companions and aides on the same basis. Labor and tax laws changed, and as structured businesses such as those represented by the Homecare Association of America emerged, placing protection of the employee and minimizing risk to the client became the basis for their businesses. Despite this shift, the registries resisted change and stuck to their model, despite rulings in Connecticut that state to the contrary that their caregivers are not independent contractors.